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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

CARLOS SANCHEZ, Plaintiff and Appellant, v. CITY OF LOS ANGELES et al., Defendants and Respondents.	B211659 (Los Angeles County Super. Ct. No. BS106560)

APPEAL from a judgment of the Superior Court of Los Angeles County, James Chalfant, Judge. Affirmed.

Diane Marchant for Plaintiff and Appellant.

Carmen A. Trutanich and Rockard J. Delgadillo, City Attorneys, Claudia McGee Henry, Assistant City Attorney, and Gerald M. Sato, Deputy City Attorney, for Defendants and Respondents.

Plaintiff and appellant Carlos Sanchez (Sanchez), a former Los Angeles Police Department (LAPD) detective, appeals a judgment denying his petition for writ of administrative mandate. (Code Civ. Proc., § 1094.5.) In the petition, which named defendants and respondents City of Los Angeles (the City) and William Bratton, Chief of Police (the Chief) (collectively, the City), Sanchez sought to overturn an administrative decision terminating his employment.

In this matter involving the Public Safety Officers Procedural Bill of Rights Act (POBRA) (Gov. Code, § 3300 et seq.),[1] the issues presented are whether the two counts of misconduct underlying Sanchez's discharge were time-barred, and if not, whether substantial evidence supports the trial court's decision upholding the administrative ruling.

We conclude the charges of misconduct were timely and that substantial evidence supports the trial court's ruling upholding the City's decision. Therefore, the judgment denying the petition for writ of administrative mandate is affirmed.

FACTUAL AND PROCEDURAL BACKGROUND[2]

1. *The motorcycle purchase.*

Beginning in 1992, Sanchez worked with the FBI and other law enforcement agencies in a task force investigating the Mexican Mafia. In 1993 or 1994, Sanchez learned that one Navarro was an FBI informant. In 1999, Sanchez arrested Navarro for a parole violation.

In 2000, Sanchez transferred to Foothill Division and in February of that year, he was advanced to Detective II and put in charge of the gang unit there.

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[1] All statutory references are to the Government Code, unless otherwise specified.

[2] The relevant facts in this case are set forth in some detail in the trial court's ruling in this matter, and because neither party has taken issue with the trial court's statement of facts, we adopt that portion of the trial court's ruling, with minor supplementation and stylistic changes. (*Taus v. Loftus* (2007) 40 Cal.4th 683, 690.)

He reviewed gang-related reports, kept track of gang identification cards, and coordinated with gang officers.

Sanchez's next contact with Navarro was in mid-January 2001 when there was a triple homicide in Foothill Division. Sanchez contacted Navarro for help in the homicide investigation. In the course of several conversations with Navarro, Sanchez indicated he was interested in getting a motorcycle. Navarro said he had a friend that was selling one. Sanchez said he would like to see it.

On February 2, 2001, Sanchez used a Department computer to run a check on a motorcycle. On March 31, 2001, Sanchez used a Department computer to run a check on the same motorcycle again, and on its owner, one Torres. On February 14 and March 14, 2001, Sanchez used the computer to check on Lisa G., a woman with whom Navarro had a child, and on March 16, 2001 he ran a check on Navarro and Navarro's wife.

In May 2001, Sanchez met Navarro at a movie studio to look at the motorcycle, which Navarro said was owned by a friend, Torres. In early June, Sanchez bought the motorcycle from Navarro, who gave him the pink slip signed by Torres.

2. *The first hearing.*

On March 31, 2003, Sanchez was served with a personnel complaint alleging the following five counts of misconduct: Count 1. Between January 1, 2001 and January 31, 2001, you maintained an improper relationship with a person you knew or should have known was a drug dealer and a police informant; Count 2. Between January 1, 2001 and January 31, 2001, you failed to notify your commanding officer of an informant you were utilizing; Count 3. On or about January 31, 2001, you improperly purchased a motorcycle from a known informant; Count 4. On an unknown date and time, you improperly released confidential documents and records to Navarro; Count 5. On or about August 1, 2001, you falsified a state document by inaccurately reporting the purchase price of a motorcycle to the Department of Motor Vehicles.

Both Navarro and Sanchez testified at the Board of Rights hearing (the first hearing) on the charges concerning Sanchez's purchase of the motorcycle through Navarro. Detective Simmons (Simmons) cross-examined Sanchez and suspected misconduct from his testimony about Navarro's criminal history. After Sanchez testified on May 2, 2003, Simmons asked for a computer printout showing Sanchez's use of Department computers. She received the printout showing he had twice run a license plate check on the motorcycle. This printout was entered as an exhibit at the first hearing on June 6, 2003.

On June 11, 2003, the Board of Rights at the first hearing found Sanchez guilty of Counts 1, 3, and 5, and recommended he be discharged. On June 30, 2003, the Chief adopted the Board of Rights recommendation and fired Sanchez effective May 1, 2003.

3. *The new complaint against Sanchez and resulting investigation; meanwhile, on the earlier complaint, Sanchez obtains reinstatement to the Department.*

On June 30, 2003, the same day the Chief fired Sanchez, Simmons initiated a new personnel complaint against Sanchez based on his improper use of a Department computer for non-business purposes.

After Sanchez was fired, Foothill Detective Escoto (Escoto) started an investigation on the new complaint. He ordered printouts of the computer inquiries Sanchez had made between December 1, 2000, and March 31, 2001. The printouts were generated on September 4, 2003.

On September 17, 2003, Sanchez filed a petition for writ of mandate in the superior court (LASC No. BS085746) challenging his termination after the first hearing and alleging, among other things, that two of the three counts underlying his termination were barred by the statute of limitations.

On September 29, 2003, Escoto contacted Sanchez, advised him there was a complaint about his computer use and requested that he submit to an interview. Sanchez said he needed to consult with his attorney. On October 6, 2003,

Sanchez's attorney called Escoto and told him Sanchez had been fired, refused to be interviewed, and would deal with the issue if reinstated. Escoto then obtained a copy of Sanchez's testimony from the first hearing, spoke to Simmons, completed the investigation and turned it in to his commanding officer in September/October 2003.

In November 2005, Sanchez and the Department entered into a settlement agreement pursuant to which Sanchez dismissed his writ petition in exchange for the Department's agreement to reconvene the first hearing to reconsider the penalty recommendation based solely on Sanchez's misconduct in Count 5 (inaccurately reporting the motorcycle purchase to the DMV). The Board of Rights ultimately recommended a reprimand. Sanchez was reinstated with back pay on or about January 3, 2006.

In February 2006, one month after Sanchez's reinstatement, the Department conducted a supplemental investigation of the computer misuse charges against Sanchez. On February 16, 2006, Department investigator Sergeant Goddard (Goddard) interviewed Sanchez regarding the fact that twice before Sanchez purchased the motorcycle, he ran a check on the motorcycle on a Department computer. Sanchez told Goddard he first became aware of the motorcycle in May 2001. As a member of a gang task force, he frequently was asked by other officers to run a vehicle check. He did not know specifically why he ran the motorcycle's plates and speculated he saw it in a driveway of a gang member's house or another officer called and asked him to run them. He claimed it was a coincidence he ran the plates of a motorcycle he subsequently purchased, and his use of the computer to run the plates twice was duty-related.

Goddard did not believe Sanchez's explanation regarding computer use. On the new personnel complaint, the Department added a charge against Sanchez of making false statements during an official investigation.

4. *The second hearing; Sanchez is terminated for a second time.*

On June 27, 2006, the Department served Sanchez with a personnel complaint which included two counts of misconduct as follows: Count 1. Between February 2, 2001 and January 22, 2002, you, while on duty and on numerous occasions, used the Department Computer System for non-duty related activities; Count 2. On February 16, 2006, you, while on duty, made false statements to Goddard.

The Board of Rights conducted a hearing on October 2 and 6, 2006 (the second hearing). Sanchez testified he must have had a duty-related purpose for all of the computer searches, but was unable to state what that purpose actually was. His check on Lisa G. must have been related to gang intelligence, but he could not recall specifically why. Nor did he know why he ran a check on Navarro's wife. Finally, he did not know Torres and could not say if there were any reason he ran a check on Torres other than for investigative purposes.

The Board of Rights disbelieved Sanchez's explanations and found him guilty of both counts. The Board of Rights recommended Sanchez be fired because his actions were intentional and calculated.

On October 17, 2006, the Chief adopted said recommendation and fired Sanchez effective July 28, 2006.

5. *Superior court proceedings*.

a. *Moving papers*.

On December 18, 2006, Sanchez filed the petition for writ of administrative mandate here in issue, seeking to set aside the Chief's October 17, 2006 decision.

Sanchez contended count 1, accusing him of using the Department computer for non-duty-related purposes, was time barred by section 3304, subdivision (d), which gave the Department one year from the date of discovery to complete its investigation and notify Sanchez of its intent to take disciplinary action. Here, Simmons received the computer printouts on June 2, 2003, revealing that checks had been run on the motorcycle and some other items, but the Department waited

nearly three years, until May 22, 2006, to advise Sanchez of its intent to take disciplinary action. Sanchez argued the Department could not invoke the tolling provision of section 3304, subdivision (d)(5), which excuses the employer from compliance with the one-year rule "[i]f the investigation involves an employee who is incapacitated or otherwise unavailable." Sanchez argued the investigation was not hindered by his unavailability, and further, the reason he was unavailable was that the Department had wrongfully terminated him in 2003. Therefore, the Department, by its wrongdoing, forfeited any benefit which might otherwise flow from said tolling provision.

Sanchez contended count 2 was also time-barred in that when an officer is charged with making false statements about suspected misconduct which is time-barred, the charge of making false statements is also time-barred.

Finally, Sanchez asserted the guilty findings were not supported by the weight of the evidence. According to Sanchez, there was no evidence the computer inquiries in issue were not duty related, and there was no evidence he made false statements when he testified he did not recall why he made a particular inquiry.

b. *Opposition papers*.

The City contended count 1, relating to computer misuse, was not time-barred because Sanchez was not a peace officer after his discharge and because he was "unavailable" as a witness following his discharge. Sanchez's misconduct was discovered by Simmons on June 6, 2003, when she questioned him during the first hearing regarding his use of the Department computer. The statute began to run on that date and ceased to run 24 days later, on June 30, 2003, upon Sanchez's discharge. The running of the statute resumed on January 3, 2006, when Sanchez was reinstated. Therefore, the service of the second personnel complaint on Sanchez, on June 27, 2006, was timely.

Further, even assuming Sanchez was a peace officer during the entire time, due to his retroactive reinstatement on January 3, 2006, the City satisfied the statute

of limitations because Sanchez was unavailable for interviews during the time he was discharged.

Further, count 2, relating to false statements at the February 2006 interview, was timely because Sanchez did more than simply deny the computer misuse charges.

Finally, the City asserted the Board's guilty findings were supported by the weight of the evidence. The issue before the Board was Sanchez's credibility and he "has given three different explanations of his computer use, none of them believable."

c. *Trial court's ruling*.

On August 13, 2008, the matter came on for hearing. After hearing argument of counsel, the trial court denied the petition for writ of mandate in accordance with its extensive tentative ruling, which the court adopted as its final ruling in the matter.[3]

In essence, the trial court rejected Sanchez's arguments that counts 1 and 2 were time-barred. As for the merits, the trial court found the weight of the evidence supported the Board of Rights' findings that Sanchez's explanations for his computer use were not credible.

On August 21, 2008, the trial court entered judgment denying the petition for writ of mandate. Sanchez filed a timely notice of appeal from the judgment.

CONTENTIONS

Sanchez contends: on its face, count 1 is time barred; section 3304, subdivision (d)(5), does not apply to the facts of this case; the trial court's alternative analysis with respect to count 1 is flawed; count two is time-barred; and the guilty findings are not supported by substantial evidence in the record.

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[3] We commend the trial court for the meticulous analysis set forth in its ruling. We largely reiterate the trial court's ruling in our own discussion of the issues.

DISCUSSION

1. *General principles*.

Section 3304 is part of POBRA, which is "primarily a labor relations statute cataloging the basic rights and protections that must be afforded to all peace officers by the public entities that employ them. One such protection – codified in section 3304 – is the speedy adjudication of conduct that could result in discipline. [Citations.] The one-year statute of limitations set out in section 3304(d) seeks to balance competing interests – the public interest in maintaining the integrity and efficiency of the police force and the individual officer's interest in receiving fair treatment. [Citations.]" (*Bettencourt v. City and County of San Francisco* (2007) 146 Cal.App.4th 1090, 1098-1099 (*Bettencourt*).)

Section 3304 "allows for tolling or extension of the one-year limitations period under specified circumstances." (*Bettencourt, supra,* 146 Cal.App.4th at p. 1099.) One of those provisions requires the tolling of the statute of limitations during the period an employee is "incapacitated *or is otherwise unavailable*." (§ 3304, subd. (d)(5), italics added.)

The pivotal issue in this case is whether Sanchez was "unavailable" between June 30, 2003, the date of his initial discharge, and January 3, 2006, the date of his reinstatement. The issue before us "turns on the meaning of the language of section 3304. To the extent that an issue on appeal requires the interpretation of statute, it raises pure questions of law that we determine de novo." (*Bettencourt, supra*, 146 Cal.App.4th at p. 1100.)

2. *Count 1, relating to computer misuse, is timely*.

Sanchez contends count 1 is time barred in that Simmons determined on June 6, 2003, at the first hearing, that Sanchez had used the Department's computer for personal reasons, yet the Department did not advise Sanchez of its proposed disciplinary action until May 22, 2006.

The controlling statute, section 3304, states in relevant part at subdivision (d)(5): "(d) Except as provided in this subdivision and subdivision (g), no punitive

action, nor denial of promotion on grounds other than merit, shall be undertaken for any act, omission, or other allegation of misconduct *if the investigation of the allegation is not completed within one year of the public agency's discovery* by a person authorized to initiate an investigation of the allegation of an act, omission, or other misconduct. This one-year limitation period shall apply only if the act, omission, or other misconduct occurred on or after January 1, 1998. In the event that the public agency determines that discipline may be taken, *it shall complete its investigation and notify the public safety officer of its proposed disciplinary action within that year, except in any of the following circumstances*: [¶] . . . [¶] (5) If the investigation involves an employee who is incapacitated *or otherwise unavailable*." (Italics added.)

In the instant case, Simmons discovered Sanchez's misuse of Department computers after May 2, 2003, when Sanchez testified in the first hearing, and she ordered the computer printout. The one-year period began to run at that time. However, the one-year period stopped running when Sanchez was discharged on June 30, 2003, because at that juncture he was no longer a City employee and thus was no longer available for disciplinary action. (*Department of Corrections & Rehabilitation v. California State Personnel Bd.* (2007) 147 Cal.App.4th 797, 804, fn. 5 [section 3304, subdivision (d) "only applies to public safety officers"].)[4]

Upon Sanchez's reinstatement on January 3, 2006, the running of the one-year period resumed. The second personnel complaint was served on Sanchez on June 27, 2006. Because the running of the one-year period was suspended between the June 30, 2003 discharge and the January 3, 2006 reinstatement (§ 3304,

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[4] Section 3301 defines the class of persons to whom POBRA is applicable. By its terms, POBRA applies only to public safety officers. The protections set forth in POBRA are limited to public safety officers, defined in section 3301 to mean "all peace officers specified in" various statutes, including Penal Code section 830.1. The definition of peace officer in Penal Code section 830.1, subdivision (a) includes "any police officer, employed in that capacity . . . ."

subd. (d)(5)), less than eight months elapsed between the Department's discovery of Sanchez's misconduct related to the computer use and its June 27, 2006 notification to Sanchez of the proposed disciplinary action. Therefore, count 1, relating to computer misuse, was timely.[5]

Even assuming the limitations period of section 3304, subdivision (d) was not tolled during the two and a half years that Sanchez was discharged due to the fact he was *retroactively* reinstated on January 3, 2006, the limitations period still did not expire because Sanchez made himself "unavailable" for interviews during the time he was not an employee of the Department. (§ 3304, subd. (d)(5).) The record reflects that on October 6, 2003, Sanchez's attorney advised the Department "that they're refusing the interview, and if reinstated, we would deal with it then." Due to Sanchez's *unavailability* for interviews between his discharge and reinstatement, the running of the one-year period was suspended during that time frame.

Accordingly, the June 27, 2006 personnel complaint with respect to count 1 was timely.

3. *Count 2 is also timely*.

Count 2 of the June 27, 2006 personnel complaint alleged that four months earlier, on February 16, 2006, Sanchez, while on duty, made false statements to the investigating officer.

Sanchez contends that when, as here, an officer is charged with making false statements about suspected misconduct that is time-barred, the charge of denying the alleged misconduct is also time-barred.

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[5] We observe that Sanchez's interpretation of the statutory scheme would result in an absurdity. If, as Sanchez contends, the running of the one-year period were not suspended upon his June 30, 2003 discharge from the force, the Department would have been required to serve Sanchez with notice of the new proposed disciplinary action *after* Sanchez had been discharged and after the employer/employee relationship between Sanchez and the City had ceased to exist.

Our resolution with respect to count 1 disposes of this issue. In view of our determination the misconduct charged in count 1 is not time-barred, it necessarily follows the misconduct charged in count 2, i.e., making false statements to an investigating officer in February 2006 with respect to the computer misconduct, is not time-barred. (§ 3304, subd. (d).)

4. *Substantial evidence supports trial court's decision upholding the administrative determination Sanchez was guilty on both counts*.

Sanchez contends the guilty findings are not supported by substantial evidence in the record. With respect to count 1, he asserts each of the computer inquiries was related to a gang member, his associates, wife, girlfriend, or was a follow-up inquiry to responses received in the initial inquiry. As to count 2, Sanchez avers there is no evidence to support a finding he made false statements when he stated all of the inquiries were duty-related, or when he stated he did not recall why he made a particular inquiry.

a. *Standard of review*.

Sanchez's discharge from his position as a police officer affected a fundamental vested right in his employment with the City. Therefore, the role of the trial court was to exercise its independent judgment in its review of the administrative finding that plaintiff was guilty of misconduct. (*Schmitt v. City of Rialto* (1985) 164 Cal.App.3d 494, 500; *Barber v. Long Beach Civil Service Com*. (1996) 45 Cal.App.4th 652, 658 (*Barber*).)

As to issues upon which the trial court has properly exercised its independent judgment, the appellate court reviews the findings of the trial court to determine whether they are supported by substantial evidence. (*Fukuda v. City of Angels* (1999) 20 Cal.4th 805, 824.)

b. *Trial court's ruling.*

In this regard, the trial court stated:

"Finally, Sanchez contends that the Board of Rights' findings of guilt are not supported by the weight of the evidence.

"Ultimately, this is a case about credibility. The weight of evidence supports the Board of Rights's finding that Sanchez was not credible. Sanchez had three opportunities to explain his computer use. His basic story has been that he has no idea why he ran the motorcycle in the Department's computer, and although he cannot remember the circumstances as to why he did it, he 'knows' that it was duty related. The court does not find this explanation any more believable than the Board of Rights did, and the Board of Rights had the benefit of being able to observe Sanchez during his testimony and personally evaluate his credibility. The logical explanation for Sanchez running the motorcycle was to find out its history and status in preparation for purchasing it. Sanchez's statement that he first became 'aware' of the motorcycle in May 2001 is not believable, and his lack of memory about everything except the 'fact' that it was duty-related is simply too convenient."

c. *Trial court's determination is supported by substantial evidence.*

An exercise "of independent judgment *does* permit (indeed, it requires) the trial court to reweigh the evidence by examining the credibility of witnesses. . . . [I]n exercising its independent judgment 'the trial court has the power and responsibility to weigh the evidence at the administrative hearing *and to make its own determination of the credibility of witnesses*.' [Citation.]" (*Barber, supra,* 45 Cal.App.4th at p. 658.)

It was the trial court's prerogative to disbelieve Sanchez's purported explanations for his computer inquiries. Under the circumstances presented, including Sanchez's using a Department computer to run a check on a motorcycle which he purchased through an informant, we must defer to the trial court's determination Sanchez simply was not credible.[6]

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[6] At oral argument on appeal, Sanchez's counsel contended the settlement agreement and reinstatement barred the Department from proceeding against Sanchez on the second personnel complaint after it reinstated him. This theory, which was not developed in Sanchez's briefs on appeal, merits no discussion.

DISPOSITION

The judgment is affirmed. The parties shall bear their respective costs on appeal.

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KLEIN, P. J.

We concur:

CROSKEY, J.

KITCHING, J.